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January 6, 2009

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: May 13, 2008

Case Number: TSO-0627

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (the Individual) to obtain an access authorization.^{1/} The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual is eligible for access authorization.^{2/} After reviewing the evidence before me, I find the Individual should not be granted access authorization.

I. Background

This administrative review proceeding began when a Department of Energy (DOE) Local Security Office (LSO) denied the Individual access authorization based upon derogatory information in its possession that created substantial doubt pertaining to her eligibility. In accordance with 10 C.F.R. § 710.21, the LSO subsequently issued a Notification Letter that included a statement of the derogatory information causing the security concern under 10 C.F.R. § 710.8(f) and (l) (hereinafter Criterion F and Criterion L).

^{1/} Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

^{2/} Access authorization (or security clearance) is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5(a).

The security concerns raised under Criterion F^{3/} in the Letter involve the Individual's false statements and omissions on a Questionnaire for National Security Positions (QNSP) submitted in February 2007. According to the LSO, the Individual: (1) indicated that she had received an honorable discharge from the military when, in fact, she received a general discharge in August 1983; (2) answered "no" to whether she had ever been terminated from employment, while her background investigation revealed that she was terminated by her employer in 2000 for improper use of company e-mail; (3) failed to include information that she had undergone psychiatric treatment several years prior to completing the QNSP and was eventually placed on antidepressant medication; and (4) answered "no" to whether she had ever been arrested for a felony, while her background investigation uncovered that the Individual was arrested and charged with attempted murder in November 1978.

The security concerns raised under Criterion L^{4/} in the Notification Letter indicate that the Individual misrepresented information to a DOE psychologist during her initial access authorization processing and when interviewed by an Office of Personnel Management (OPM) investigator. The information that she misrepresented to both the DOE psychologist and the OPM investigator is the same information that she omitted or falsified on the QNSP: (1) the type of discharge from the military, (2) her felony arrest, (3) her employment termination, and (3) her antidepressant medication. Finally, the Notification Letter indicated that the Individual provided random answers on the Minnesota Multiphasic Personality Inventory-2 (MMPI-2) that was administered by the DOE psychologist during the access authorization process. Although the LSO raised these concerns under Criterion L, I believe that they would be more appropriately considered under Criterion F. The information was deliberately misrepresented in response to an official inquiry made pursuant to a determination regarding the Individual's eligibility for access authorization. Therefore, I will consider the derogatory information regarding these misrepresentations and omissions under Criterion F.

^{3/} Criterion F refers to information indicating that an individual "deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive (or National Security) Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization." 10 C.F.R. § 710.8(f).

^{4/} Criterion L refers to information indicating that the Individual has "engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy." *Id.* at § 710.8(l).

The Notification Letter informed the Individual that she was entitled to a hearing before a Hearing Officer in order to respond to the information contained in that letter. Upon receipt of the Notification Letter, the Individual requested a hearing, and that request was forwarded to the Office of Hearings and Appeals (OHA). I was appointed the Hearing Officer in this matter. In accordance with 10 C.F.R. § 710.25(e) and (g), the hearing was convened.^{5/}

At the hearing, the Individual represented herself. She testified on her own behalf, and presented the testimony of her pastor, friend, and husband. The DOE Counsel presented no witnesses. The DOE Counsel entered eight exhibits into the record.

II. The Hearing Testimony

A. The Individual

The Individual testified that she falsified the information on her QNSP because she was embarrassed. Hearing Transcript (Tr.) at 9. She stated that she does not like to talk about her personal life. Tr. at 7, 9. She testified that the behavior that she omitted on her QNSP occurred in the past. Tr. at 10. She testified that her behavior has changed. Tr. 10. She stated that she is a different person now. Tr. at 10.

B. The Individual's Pastor

Her pastor testified that he is the Individual's friend as well as her pastor. Tr. at 13. He has known the Individual for four or five years. Tr. at 13. They interact every day. Tr. at 13-14. Mostly, they discuss spiritual matters. Tr. at 14. He is aware of that the Individual was in the military, but not the status of her discharge. Tr. at 14. He is also aware of her arrest and that she takes medication for depression. Tr. at 14-15. He was not aware that she was terminated from a previous employment. Tr. at 15. Her pastor concluded that she does talk about herself; she is not any more reticent than any of his other congregants. Tr. at 16-17. She does not dwell on herself or her problems. Tr. at 16.

C. The Individual's Friend

The Individual's friend testified that he has known her for about three or four years. Tr. at 20. When they were employed together, they would interact daily about work. Tr. at 20. Presently, they speak frequently about work and family. Tr. at 21. The Individual has always been truthful with him. Tr. at 21. When they speak, she talks about her husband and daughter, but rarely speaks about herself. Tr. at 23-24. The friend knew that the

^{5/} 10 C.F.R. § 710.25(g).

Individual had been in the military, but not what type of discharge she was given. Tr. at 22. He knew that she was on medication for depression. Tr. at 22. He did not know that she had been fired from a previous employment. Tr. at 22.

D. The Individual's Husband

The Individual's husband testified that he has known his wife for about 13 or 14 years. Tr. at 26. They met while they were working together. Tr. at 27. They have been married 10 years. Tr. at 27. She is honest. Tr. at 27. Her husband was aware that his wife had been in the military, but did not know what type of discharge she received. Tr. at 27. He knew about her felony arrest for attempted murder. Tr. at 29. He knew that she had been fired from a job when it happened, because they were married at the time. Tr. at 30. He was not aware that she spoke to her doctor about a mental health issue. Tr. at 32. She is not gregarious and keeps her own counsel. Tr. at 31.

III. *Standard of Review*

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of proceeding, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a strong presumption against the granting or restoring of a security clearance. See *Dep't of Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of the national security test" for the granting of security clearances indicates that "security-clearance determinations should err, if they must, on the side of denials.") *Dorfman v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issue. *Personnel Security Hearing*, Case No. VSO-0002 (1995). Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate, or mitigate the allegations. *Personnel Security Hearing*, Case No. VSO-0005, *aff'd*, (1995). See 10 C.F.R. § 710.7(c).

IV. Findings and Conclusions

A. Criterion F

In evaluating a Criterion F case involving falsifications and omissions, I must consider factors such as whether the individual came forward voluntarily to renounce her falsifications or to admit to her omissions, the length of time of falsehood or omission was maintained compared to the length of time the individual has been honest, whether there is a pattern of falsifications or omission, and the amount of time that has transpired since the individual's admission. *See Personnel Security Hearing, Case No. TSO-0587 (2008)*, and cases cited therein.

1. Falsifications on the QNSP

In this case, I find that the Individual deliberately falsified and omitted relevant and material information on her February 2007 QNSP. She falsified information when she failed to indicate that her discharge from the military was not honorable. She also falsified and omitted information when she failed to include her felony arrest for attempted murder, her employment termination, and her antidepressant medication prescription. She testified that she deliberately falsified this information on the QNSP because she does not like to speak about her past transgressions and was embarrassed.

The only factors supporting mitigation--that the Individual maintained the falsifications for only six months and she has now been honest with the DOE for over a year--are clearly outweighed by those factors that aggravate the security concern. Weighing against granting the Individual's access authorization is that the Individual did not come forward on her own to report these falsifications. They were discovered during a background investigation. Further, her falsifications are recent, having occurred in 2007. Finally, there is a pattern of deception. She falsified the same information on her QNSP and later to both the DOE psychologist and the OPM investigator.

The Individual did not present any evidence at the hearing to mitigate the Criterion F concern, other than her reluctance to share information about herself. The witness testimony at the hearing supported her claim that she does not like to share information about herself with others. None of the three witnesses knew that she did not receive an honorable discharge from the military. Neither her pastor nor her friend was aware that she had been terminated from employment. The Individual's husband was unaware that the Individual had spoken to her doctor about a mental health issue and was subsequently prescribed an antidepressant medication. The access authorization process does not permit an individual to keep information about her character and past behavior private. "Applicants or employees shall be required to provide relevant information pertaining to their background and character for use in investigating and adjudicating their eligibility

for access.” Exec. Order No. 12,968, 60 Fed. Reg. 40,245 (August 7, 1995). Although all of this testimony might support the Individual’s claim that she does not like to share her past transgressions, it does not mitigate the Criterion F concern regarding her falsifications and omissions on her QNSP.

2. Misrepresentations and Omission to DOE psychologist and OPM Investigator and Random Answer on the MMPI-2

I now turn to the derogatory information indicating that the Individual misrepresented and omitted information to the DOE psychologist conducting testing during the security clearance process and to the OPM investigator conducting a background investigation. The LSO also stated that the Individual admitted that she randomly answered questions on the MMPI-2 administered by the DOE psychologist. As stated in the background section above, I believe this derogatory information is more aptly considered as a Criterion F security concern. The Individual was not completely honest and truthful with the DOE psychologist and the OPM investigator or while taking the MMPI-2. I find that these deliberate misrepresentations and omissions, occurring during the access authorization process, support a Criterion F security concern.

At the hearing, the Individual’s only explanation for falsifying and omitting information during interviews with the DOE psychologist and the OPM investigator was that she is a very private person who does not like to speak about her past transgressions. As discussed above, this is supported by her witness testimony. Also as stated above, such privacy is not permitted by the access authorization process. The Individual presented no further evidence to explain her behavior during the psychological evaluation or during her interview with the OPM investigator. She presented no testimony on the matter of her random answers on the MMPI-2. Therefore, after considering all the evidence, I find that the Individual has not mitigated the security concerns raised by Criterion F in regard to her falsifications on her QNSP, her misrepresentations and omissions to the DOE psychologist and the OPM investigator, or her random answers on the MMPI-2

B. Criterion L

The LSO raised a security concern under Criterion L based on the Individual’s misrepresentations and omission to the DOE psychologist and OPM investigator. It also raised a security concern under Criterion L based on the Individual’s admission that she randomly answered questions on the MMPI-2 administered by the DOE psychologist. At the hearing, the Individual presented no testimony to address the Criterion L concerns raised in the Notification Letter. As I indicated above, I considered these concerns under Criterion F. To the extent the Criterion F concerns addressed in this Decision do not duplicate the Criterion L concerns raised in the Notification Letter, I find no mitigation of any of the Criterion L.

V. Conclusion

As the foregoing indicates, the Individual has not resolved the Criteria F and L security concerns cited in the Notification Letter. Therefore, I must conclude that the Individual has not shown that granting her access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Consequently, it is my decision that the Individual's access authorization should not be granted at this time. The parties may seek review of this decision by an Appeal Panel. 10 C.F.R. § 710.28(b)-(e).

Janet R. H. Fishman
Hearing Officer
Office of Hearings and Appeals

Date: January 6, 2009